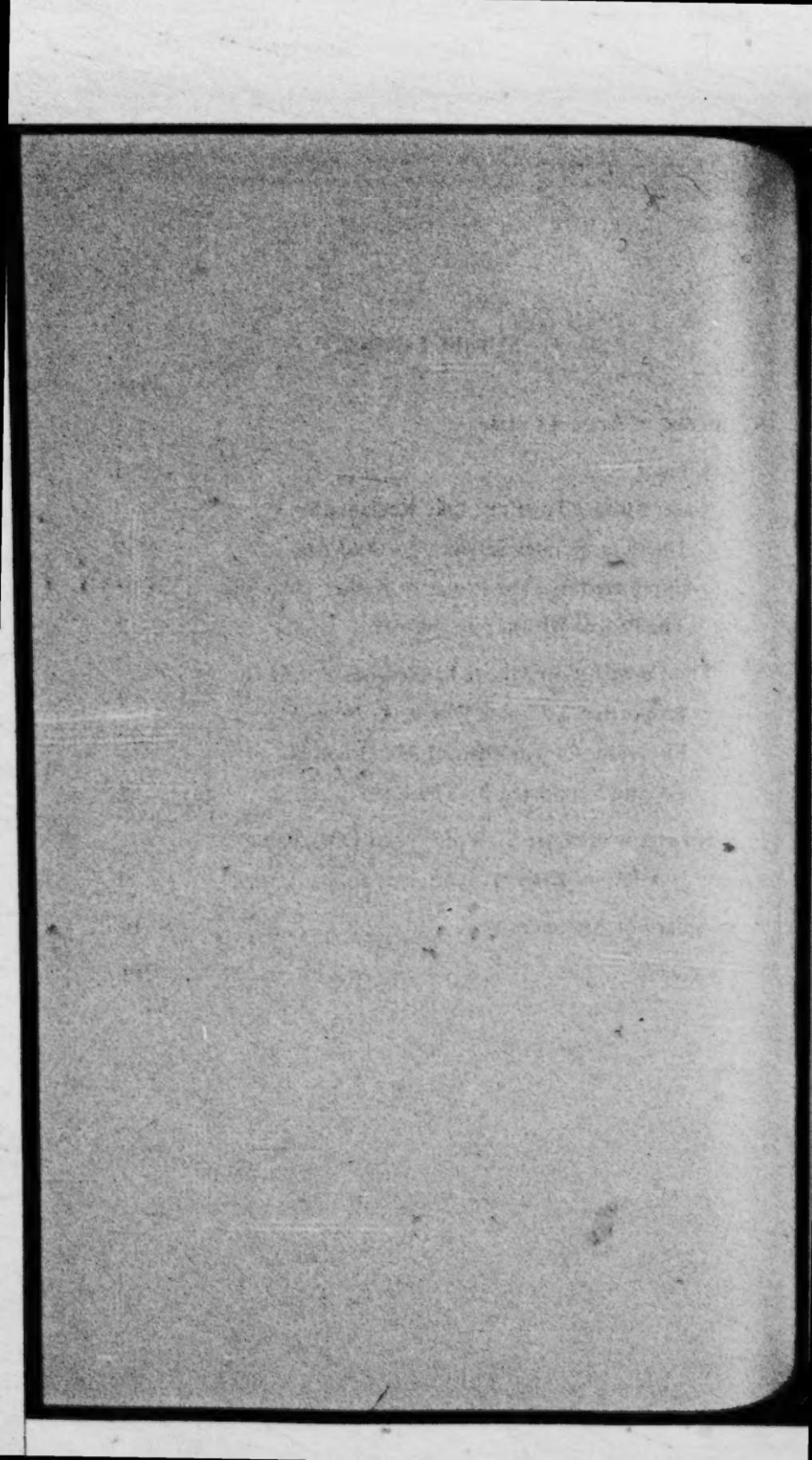


## SUBJECT INDEX

	Page
Interest of Amicus Curiae .....	1
Argument .....	3
Water Storage Districts, Like Reclamation Districts, Render Services To, And Are Supported By, The Property Rather Than The People Within The District .....	3
The Constitution Allows Landowner Voting In Proportion To Value Where, As Here, The Functions Of The District Are Oriented To And Supported By The Land .....	5
If Landowners Are To Vote, Then Land Value Is A Proper Basis .....	9
Summary of Argument .....	10
Conclusion .....	11



## TABLE OF AUTHORITIES CITED

	Page
<b>Cases</b>	
<b>Abute v. Mundt, 403 U.S. 182 (1971) .....</b>	<b>9</b>
<b>Associated Enterprises, Inc. v. Toltec Watershed Improvement District, 490 P. 2d 1069 (Wyoming, 1971) .....</b>	<b>2</b>
<b>Burney v. Embarcadero Mun. Improvement Dist., 5 Cal. 3d 671 (1971) .....</b>	<b>7</b>
<b>Cooper v. Leslie Salt Co., 70 Cal. 2d 627 (1969) .....</b>	<b>7</b>
<b>County of Riverside v. Whitlock, 22 Cal. App. 3d 863 (1972) .....</b>	<b>8</b>
<b>Gordon v. Lance, 403 U.S. 1 (1971) .....</b>	<b>7,8</b>
<b>Hadley v. Junior College District, 397 U.S. 50 .....</b>	<b>7,8</b>
<b>Phoenix v. Kolodziedjski, 339 U.S. 204 (1970) .....</b>	<b>5,6,8</b>
<b>Whitcomb v. Chavis, 403 U.S. 124 at 156 (1971) .....</b>	<b>9</b>
<b>Statutes</b>	
<b>California Water Code, Sec. 35000 et seq. .....</b>	<b>2</b>
<b>California Water Code, Sec. 39400 et seq. .....</b>	<b>3,5</b>
<b>California Water Code, Sec. 41000 .....</b>	<b>2,3</b>
<b>California Water Code, Sec. 41001 .....</b>	<b>2</b>
<b>California Water Code, Sec. 41020 .....</b>	<b>10</b>
<b>California Water Code, Sec. 41150 .....</b>	<b>2</b>
<b>California Water Code, Sec. 42200 et seq. .....</b>	<b>3</b>
<b>California Water Code, Sec. 46176 .....</b>	<b>3</b>
<b>California Water Code, Sec. 50000 et seq. .....</b>	<b>1</b>
<b>California Water Code, Sec. 50300 et seq. .....</b>	<b>3,5</b>
<b>California Water Code, Sec. 50700 .....</b>	<b>2</b>
<b>California Water Code, Sec. 50704 .....</b>	<b>3</b>

<b>California Water Code, Sec. 51000 et seq.</b>	3
<b>California Water Code, Sec. 51231</b>	3

In the  
**Supreme Court of the United States**

October Term, 1972  
No. 71-1456

**SALYER LAND COMPANY, a California corporation, C. EVERETTE SALYER; FRED SALYER; LAWRENCE ELLISON; and HAROLD SHAWL,**

*Appellants,*

vs.

**TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,**

*Appellee.*

**On Appeal from the United States District Court  
for the Eastern District of California**

**BRIEF OF  
CALIFORNIA CENTRAL VALLEYS FLOOD CONTROL  
ASSOCIATION AS AMICUS CURIAE**

**Interest of Amicus Curiae**

This brief is submitted by the California Central Valleys Flood Control Association (hereinafter the "Association") as amicus curiae pursuant to written consent of the parties filed with this Court. The membership of the Association includes sixty reclamation districts organized under Division 15 (Sections 50000 et seq.) of the California Water Code. (All references to code sections are to the California Water Code). These districts comprise a total of 650,000 acres within the Sacramento and San Joaquin Valleys in California. They comprise a major part of the agricultural area along the Sacramento River and in the Sacramento - San Joaquin delta. There are many other reclamation districts in California, not

members of the Association, including several within the boundaries of Appellee District.

The voting procedures for water storage districts and for reclamation districts (Sections 50700 et seq.) are substantially identical, except that reclamation districts vote at large while water storage districts vote by divisions (Sections 41150 et seq.) All reclamation districts in California may thus be affected by the decision of this Court on whether voting within California water storage districts by landowners in proportion to the value of their property (under Sections 41000 and 41001) is constitutional.

For that reason the Association files this brief in support of the position of Appellee District. The Association believes that the voting procedure for water storage districts is clearly rational, not violative of any public policy and is constitutional as determined by the majority of the Court below.

Reclamation districts and water storage districts are not unique in voting in proportion to land ownership. Many other types of districts in California operate through a board elected on the basis on land ownership, as for instance, California water Districts (formed under Sections 35000 et seq.). It is a procedure which is widely used elsewhere, as shown in *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 490 P. 2d 1069 (Wyoming, 1971).

The Court below was unanimous in upholding the constitutionality of voting by landowners and in rejecting the contention that residents must be allowed to vote within Appellee District. The majority of the Court upheld the weighted vote on the basis of value of the lands owned, and rejected the contention that tenants, as well as landowners, must be allowed to vote. The majority correctly construes the Constitution as applied to a district like Appellee with limited powers related directly to the lands served.

## ARGUMENT

### **Water Storage Districts, Like Reclamation Districts, Render Services To, And Are Supported By, The Property Rather Than The People Within The District.**

A water storage district is formed at the request of real property owners having land which is susceptible of irrigation from a common source (Section 39400). Reclamation districts are formed by owners of swamp or overflowed lands which are susceptible of reclamation from such overflow (Section 50300). These provisions are entirely unrelated to whether or not there are any residents within the area affected. Both provide a vehicle to deal with problems related to the land, either lack of water or too much of it, through the actions of the owners of the land involved.

A water storage district acts through projects approved by the landowners (Sections 42200 et seq.). A reclamation district acts through plans of reclamation approved by the County Board of Supervisors or the State Reclamation Board (Sections 51000 et seq.). District activities are thereafter largely limited to the construction, operation and maintenance of the "project" for the water storage district and the "plan" for the reclamation district. These activities are related to the development or protection of the property within the district.

The "project" of the water storage district is then paid for by assessments upon the land in proportion to the benefits which it receives (Section 46176). The reclamation district assessment is similar (See e.g. Section 51231). Provisions for elections in each type of district call for votes in proportion to value of land, comparable to the way in which the "project" or "plan" is financed (Sections 41001 and 50704).

Appellee water storage district, has within its boundaries numerous reclamation districts which attempt to prevent the overflow of the area within their respective boundaries by maintenance of levees and drainage facilities. Most of these reclamation districts have no residents. See Exhibit A attached hereto. This is not unique. Many of Association's member reclamation districts have few or no residents even now, years after their reclamation has been completed.

Voting based upon residency as urged by Appellants in this case, would be illogical and inappropriate in such a district. It is apparent that these districts are not set up to serve people but to serve land. They serve the same basic function whether anyone lives within the district or not.

Nor is lack of population mere accident or happenstance. Reclamation districts are formed from property subject to flood or overflow. There will, of necessity, be few if any residents when formed. This is also true with respect to water storage districts whose purpose is to bring water to lands in need of irrigation. The logical concomitant of this situation is sparse population. Appellee District is an example of such a sparsely populated district.

Where there are residents living within such a district they may, of course, be affected by the district's activity to the extent that it enhances the economy. But to conclude on this basis that the residents are the persons who must control the district is a non sequitur. Residents immediately outside the geographic unit may also be affected by the district's operation and yet it could not be suggested that such adjacent residents must join in the control of the district.

The geographic limits of these districts are not in any way related to any particular economic or social unit such as is reflected in a city or a county. District boundaries are con-

trolled by geologic conditions. See Sections 39400 et seq. (water storage districts) and Sections 50300 et seq. (reclamation districts). Both water storage districts and reclamation districts are thus organized, financed and operated by and for the lands protected and benefited thereby and not by or for activities related to the general population of the lands served. It is appropriate that they be managed in the same manner.

**The Constitution Allows Landowner Voting In Proportion To Value Where, As Here, The Functions Are Oriented To And Supported By The Land.**

The law applicable to this case reflects a distinct and proper trend in the direction of recognizing the need for flexibility in local voting procedures.

In *Phoenix v. Kolodziejksi*, 399 U.S. 204 (1970) a policy to apply in this case is suggested. The Court there dealt with a vote limited solely to property owners in an election to authorize the issuance of bonds to be serviced by property taxes. The bonds were to be used to finance municipal improvements such as parks, playgrounds, sewer systems, police and libraries.

Both property owners and nonproperty owners have a substantial interest in the public facilities and services to be provided by the outcome of that election. The Court states (at page 209) that when all citizens are affected in important ways by governmental decisions, the constitution doesn't permit weighted voting to the exclusion of otherwise qualified citizens from the franchise. Placing the vote solely in the power of the property owners, the Court indicates, could however be justified when there is some overriding interest of those owners which the state is entitled to recognize. The

clear inference is that such a situation may exist although it wasn't before the Court in that case.

The Court comments (page 210) that the justification for restricting the franchise to the property owners would seem to be strongest where only property tax revenues would be used to service the general obligation bonds. In this regard, without doubt, the case presently before the Court is stronger than *Phoenix* where other sources of revenue were available. The bonds in that case were to be used to service all of the people of that area, with such people-oriented services as libraries and police. Residents may well be entitled to the franchise when they are so vitally concerned with the functions to be authorized by that election.

In the case before this Court no such services are involved. Not only are the costs of Appellee District's operation borne solely by the property benefited, but the services performed by the district are also property-oriented. We are here concerned with property in need of irrigation. That property is assessed by the district for the sole purpose of providing the irrigation needed. No people-oriented services are involved. The overriding interest of the owners in the irrigation of their lands is apparent. This is clearly a stronger case for restricted voting than the one before the Supreme Court in *Phoenix*.

Again in *Phoenix* the Court states (page 212) that there was "no basis for concluding that nonproperty owners are substantially less interested in the issuance of the securities than are property owners". The inference is clear and is applicable in the case presently before the Court. Here there is the basis for a conclusion that nonproperty owners are substantially less interested in the operation of the irrigation system than property owners.

In the words of *Phoenix* (page 212) there is in this case an "adequate reason to restrict the franchise . . . to property

owners . . .": The Appellee District was formed for the purpose of serving property not people; it in fact serves property not the people. Certainly it is not arbitrary to have voting in such a water storage district determined by ownership of the land served.

This concept is again recognized in *Gordon v. Lance*, 403 U.S. 1 (1971). The Court there states: "The defect this Court found in those cases (*Gray* and *Cipriano*) lay in the denial or dilution of voting power because of group characteristics — geographic location and property ownership — that bore no valid relation to the interest of those groups in the subject matter of the election; . . ." (403 U.S. 4). Such a valid relation does exist in this case.

The earlier decision of *Hadley v. Junior College District*, 397 U.S. 50, also recognizes at pages 54 and 55 that popular elections need not always be required and that other innovations by a State are proper.

The recent decision of the California Supreme Court in *Burrey v. Embarcadero Mun. Improvement Dist.*, 5 Cal. 3d 671 (1971) is not inconsistent with this approach. That case struck down the application of landowner voting on the basis of value in a district which exercised powers comparable to that of a city and in which a substantial population density had developed. It may be implied from this decision that even a local agency exercising broad general powers could be formed and commence operation with land value voting, provided an equitable provision were made to shift voting control to residents as the population develops. Indeed such a plan was previously approved by the California Supreme Court in *Cooper v. Leslie Salt Co.*, 70 Cal. 2d 627 (1969). Appellee District in this case has no general powers and only the sparsest of population and continued land value voting should be justified on either score.

A proper example of the rule anticipated in the *Hadley*, *Phoenix*, and *Gordon* decisions for application in the present case is shown by the recent decision of the California Court of Appeal in *County of Riverside v. Whittlock*, 22 Cal. App. 3d 863 (1972). In that case a special assessment was imposed by the County for an improvement to be constructed at the expense of the owners of the lands benefited. The assessment was approved despite a protest from the owners of 8.6 per cent of the lands affected since a majority of the lands must protest to defeat the assessment. The protestors challenged on the basis that the small landowners and nonlandowning residents were not given an appropriate voice and the majority in land ownership was allowed, in effect, to control. The Court of Appeal, after review of the decisions of this Court, stated at page 876:

"Since only those landowners who are directly benefited are charged with the cost of the improvements in proportion to the benefit conferred and since land area bears some reasonable relationship to the amount of the assessment, there is a rational basis for making the governmental decision subject to landowners' protest and in measuring the sufficiency of the protest by the land area protested."

This statement is completely appropriate when applied to the construction, operation and maintenance of irrigation facilities for the benefit of the lands served; the sole function of Appellee District. A majority of the lands, voting as such, can properly determine whether such facilities should be installed and indebtedness incurred therefor. It should similarly be allowed to control the operation and maintenance of those facilities through the Board chosen for that purpose.

Justice Harlan's opinion in *Whitcomb v. Chavis*, 403 U.S. 124 at 156 (1971), correctly describes the increasing care and caution with which this Court has applied the constitutional yardstick to State electoral procedures. At page 166 Justice Harlan cites *Abate v. Mundt*, 403 U.S. 182 (1971) as a recognition by this Court of the need for flexibility in local governmental arrangements, and the interest in preserving the integrity of political subdivisions and the longstanding tradition behind the State's practice being challenged. He describes the impossibility of achieving absolute equality in "voting power" and the need for the Court to continue and even to increase its restraint in overturning electoral procedures established by the States. That restraint applied consistently with the decisions of this Court, would uphold the constitutionality of the election procedures in California water storage districts and sustain the decision below.

#### If Landowners Are To Vote, Then Land Value Is A Proper Basis

Appellants would not only give a vote to each resident, but also to each tenant and each landowner. Such an arrangement would create a hodgepodge of potential voters and the ability, through perfectly proper methods, to create many more voters with victory presumably available to the one with the most fertile imagination.

Ownerships can be created by selling small parcels of land to several compliant buyers subject to a lease-back arrangement, for example, or by a corporate landowner distributing a portion of its land among its shareholders. Tenancies can be created, by leasing to multiple entities with a sublease in favor of a single farming company, or through multiple subleases. (If "tenants" are entitled to vote, are not "sub-

tenants" as well?) Residents can even be created in a district such as Appellee by landowners or tenants moving their employees into the district. Each of these criteria for voting would, in a district like Appellee, be subject to manipulation, and none should be compelled by the constitution.

The only method of voting in such a district in which additional votes cannot be intentionally generated is by value of land. Land values can be added only by the County Assessor (Section 41020) and are not subject to expansion by those within the district in an attempt to alter the voting pattern. The California legislature has thus chosen the most stable basis for voting in such a district and the one which permits voting in the same proportion as the benefits and burdens are shared, as noted by the Court below. It should be sustained.

#### **SUMMARY OF ARGUMENT**

Appellee district performs a limited service in obtaining and distributing irrigation water to lands within its boundaries. The district was formed by landowners, and is supported by assessments upon the lands within the district in proportion to the benefits received by those lands. Landowners have an overriding interest in the operation and maintenance of that service. The Constitution does not prevent a determination by the state that the governing board of such a district may be selected by the landowners within the district. Voting for such a board by landowners, in proportion to the value of the lands benefited, is logical, equitable and proper.

### CONCLUSION

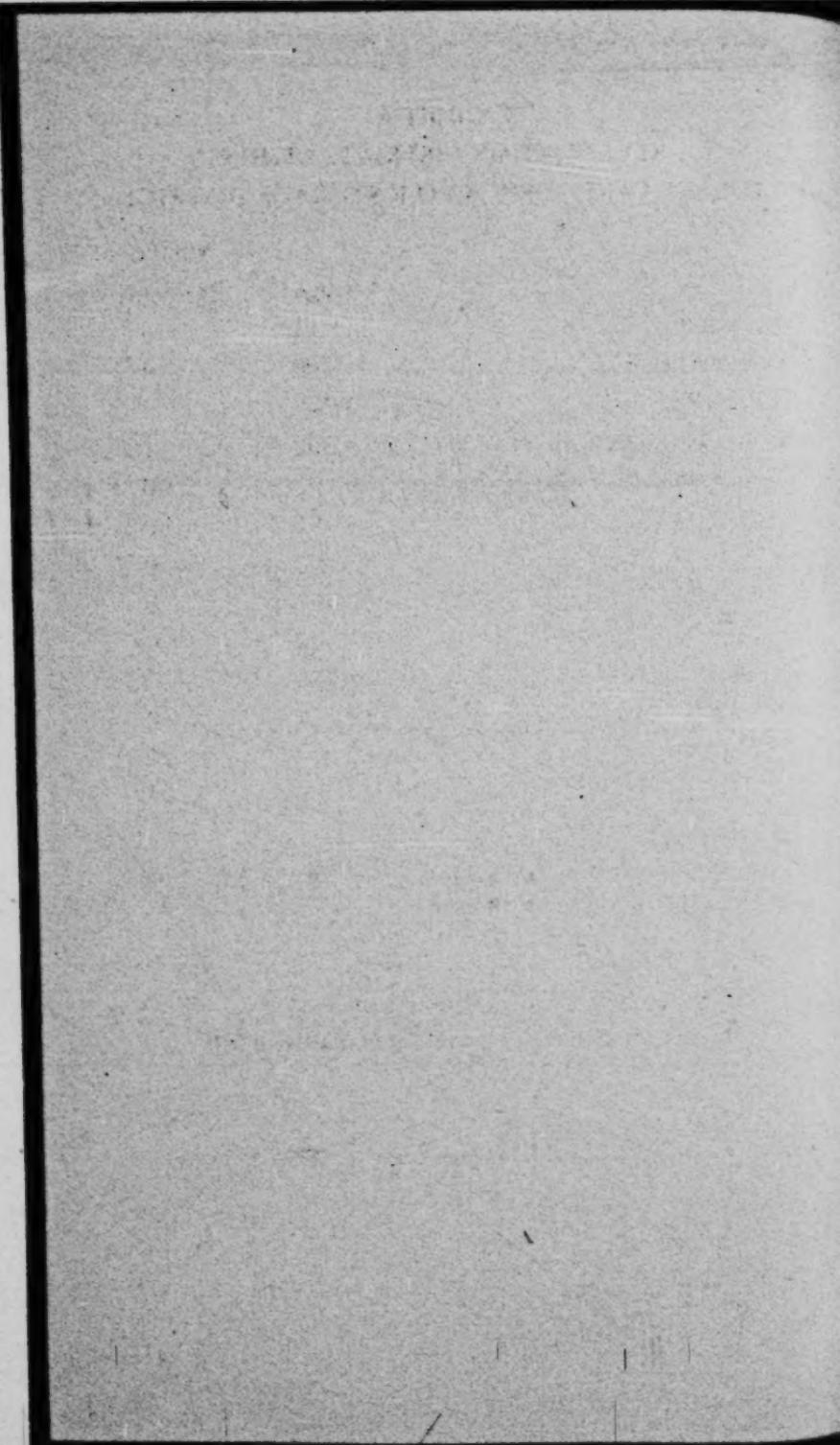
The voting procedure under Water Code Sections 41000 and 41001 is constitutional in view of the nature of the Appellee water storage district and the function which it performs. A contrary view could upset the long standing and well established voting procedures of all landowner voting districts in California, including reclamation districts. The Constitution does not require such a result. The decision of the lower Court should be affirmed.

September 8, 1972.

Respectfully submitted,

GEORGE BASYE

*Counsel for Amicus Curiae*



**EXHIBIT A**  
**RECLAMATION DISTRICTS WITHIN**  
**TULARE LAKE BASIN WATER STORAGE DISTRICT**

	Number of Residents **	Acreage *
Homeland R. D. 780	4	27,518
Wulbur R. D. 825	4	16,300
El Rico R.D. 1618	2	13,548
North Central Consolidated 2071	1	8,300
Consolidated R. D. 812	0	9,692
Gates R. D. 2079	0	3,697
Delta Lands R. D. 770	0	13,400
O'Bryan R. D. 760	0	12,800
Cohn Central Consolidated 761	0	27,000
Goldberg R. D. 753	0	3,751
Tulare Lake R. D. 749	0	18,314
	11	

\* Locations of these districts are shown in the Appendix on Plaintiffs' Exhibit 3.

\*\* The remaining residents in Appellee District live on the higher perimeter lands outside the reclamation districts as shown in the Appendix on Defendant's Exhibit P.